COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION 1

Hill RHF HOUSING PARTNERS, L.P., and OLIVE RHF HOUSING PARTNERS, L.P., Appellants and Petitioners, vs. CITY OF LOS ANGELES, *et al.*, Appellees and Respondents.	Court of Appeal No. B288356 Superior Court No. BS138416

Appeal from an Order of the Los Angeles County Superior Court
Hon. Amy D. Hogue, Judge of the Superior Court

APPELLEE'S BRIEF ON APPEAL

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I. INTRODUCTION

Appellants Hill RHF Housing Partners, L.P., and Olive RHF Housing Partners, L.P. ("Appellants") appeal from an Order Denying Appellant's Motion to Enter Judgment Enforcing a Settlement Agreement.

In 2012 Appellants sued the City, alleging constitutional defects in the Downtown Center Business Improvement District adopted by ordinance of the City Council on June 19, 2012 (the "2013 DCBID"). A Business Improvement District ("BID") is an assessment district created pursuant to Article XIIID of the California Constitution. BIDs generally provide services (a "special benefit") to properties in the district and assess properties for the cost of providing those special benefits, as explained in more detail below. The parties resolved this litigation through a Settlement Agreement finalized in February of 2013.

The 2013 DCBID was due to expire on December 31, 2017, and the City began the process of creating a replacement

business improvement district, the "2018 DCBID." Appellants believed that the settlement agreement required the City to satisfy assessments made with respect to the 2018 DCBID. The City disagreed. Appellants filed a Motion seeking to force the City to satisfy such assessments.

After briefing and a hearing the Superior Court agreed with the City and denied the Motion. The Court looked to the Agreement as a whole, which explicitly limited the Agreement to "the DCBID adopted by ordinance of the City Council on June 19, 2012," i.e., the 2013 DCBID. (IV AA at 678.) The Court also held that "when an agreement has no specified term, the Court will imply a reasonable term" and concluded that should there be any ambiguity, the reasonable term for the Settlement Agreement would be the lifetime of the 2013 DCBID. (IV AA at 679).

On appeal Appellants focus on only one clause, a small part of Paragraph 5 of the Agreement. Appellants misleadingly describe this as the "language in dispute;" however, the entire Agreement actually is in dispute, and the rest of the Agreement

indisputably would end the City's obligations with the expiration of the 2013 DCBID. But reading **all** of Paragraph 5 (rather than just the small portion quoted by Appellants) shows that even Paragraph 5 cannot be read as Appellants' wish. Appellants ignore the Court's ruling that it can imply a reasonable term to the Settlement Agreement, and do not contest that the Court's imputed term is reasonable.

Moreover, should Appellants be correct and should the Settlement Agreement continue indefinitely, Appellants must still show that the 2013 DCBID "continues in its current formulation," as required by Paragraph 5. (IV AA at 227). This issue was not reached by the Superior Court, but weighs against Appellants. They point to a number of superficial similarities between the 2013 DCBID and the 2018 DCBID, but cannot show that the 2018 DCBID continues the "current formulation" of the 2018 DCBID. The 2018 DCBID does not assess for the general benefits provided by its services. The two BIDs thus use different formulations. Like a chocolate cake and a bran muffin, the two

BIDS are similar in some respects, but the recipes are substantially different: the 2018 DCBID uses "bran" when it computes and does not assess the costs of general benefits.

The Court's ruling was sound and should be upheld.

II. ISSUES ON APPEAL

1. Whether the Settlement Agreement, read as a whole and including the explicit language limiting the agreement to the DCBID created by ordinance on June 19, 2012, imposes obligations on the City after that DCBID ceases ceased to exist.

2. Whether the Court properly imputed a December 31, 2017 termination date to the Settlement Agreement if the Settlement Agreement did not end by its explicit terms on December 31, 2017.

3. Whether the 2018 DCBID uses the "current formulation" of the 2013 DCBID despite the 2018 DCBID for the first time computing a general benefit from its services that was not assessed against properties in the DCBID area.

III. STATEMENT OF THE CASE

A. BACKGROUND.

Business improvement districts ("BIDs") are assessment districts created under Article XIIID of the California Constitution. A BID assesses properties within the district for the proportional costs of providing special benefits, i.e., the services it provides to the assessed properties. (Article XIID, Section 4(a).) A BID is not allowed to assess properties for general benefits, i.e., services provided to the public at large. (*Id.*)

On June 19, 2012, the City Council adopted an ordinance creating the Downtown Center Business Improvement District, which would last from January 1, 2013, until December 31, 2017 (the "2013 DCBID"). (I AA 175-182.) This was the latest in a line of DCBIDs beginning no later than the 1990s, each enacted for a specific term and replaced by a subsequent DCBID. (III AA 451-655.) Among other things, the Engineers Report for the 2013 DCBID concluded that the 2013 DCBID would not provide any

general benefits. (I AA at 21-168.) Accordingly, the entire cost of the 2013 DCBID's services was assessed against property owners as a special benefit. (*Id.*)

Appellants filed a Petition contesting the 2013 DCBID in 2012. In their Petition Appellants made no allegations whatsoever regarding any BID except for the 2013 DCBID. (I AA at 2-8.) Attached to the Petition were an Engineer's Report and a Management District Plan only addressing the 2013 DCBID, the DCBID that would operate between January 1, 2013, and December 31, 2017. (I AA at 21-168.) The parties entered into the Settlement Agreement to resolve this litigation, as discussed further below.

On June 7, 2017, the City Council adopted an ordinance to create a new DCBID with a term that would run from January 1, 2018, until December 31, 2027 (the "2018 DCBID"). (III AA at 651-655.) The 2018 DCBID would have the same geographic boundaries as the 2013 DCBID, and similarly calculated special benefit assessments based on property and building sizes (II AA

at 336-396); however, unlike the 2013 DCBID, the 2018 DCBID concluded that its services did provide a general benefit. (II AA at 357-360.) Thus, unlike the 2013 DCBID, the 2018 DCBID did not assess properties for the cost of general benefits. (*Id.*)

B. THE SETTLEMENT AGREEMENT.

The Settlement requires Appellants, within "30 . . . days of payment of any assessment to the DCBID" to submit proof of such payment to the City. (II AA at 228, Term 1.a.i.) "Upon receiving proof of payment of any assessment paid to the DCBID, the City shall . . . provide funds equal to the amount paid by [Appellants]. . . ." (II AA at 228, Term 1.a.ii.) The meaning of an "assessment paid to the DCBID" is made clear by the Paragraphs. (II AA at 227.)

Paragraph 1 states in part that "[d]isputes have arisen between the Parties regarding the Downtown Center Business Improvement District (the "DCBID") located in the City of Los Angeles as set forth in an action entitled Hill RFH Housing

Partners, L.P.; Olive RHF Housing Partners, L.P. v. City of Los Angeles, et al (the "Litigation"). (II AA at 227.)

Paragraph 2 states in part that "[t]his litigation concerns the formation of the DCBID, adopted by ordinance of the City Council on June 19, 2012." (II AA at 227.) It later states that "[t]he details for the operation of the DCBID and the assessments to be made to support the operation of the DCBID are set forth in an Engineer's Report and a District Management Plan, which are attached to the Petition for Peremptory Writ of Mandate ("Petition") on which this matter is based." (*Id.*)

Paragraph 5 states in part that "the City will undertake to make the Plaintiffs whole for those assessments made by the DCBID against the properties owned by Plaintiffs at the time of the formation of the DCBID, as described in the Petition. For so long as the Plaintiffs remain the owners of these properties, and the DCBID continues in its current formulation, the City will remit to Plaintiffs an amount sufficient to satisfy the amounts paid by Plaintiffs to the DCBID. . . ." (II AA at 227.) Paragraph

5 continues, however, and limits the City's obligations to "the amounts paid by Plaintiffs to the DCBID **as part of assessments set forth in the Engineer's Report and the Management Plan.**" (*Id.; emphasis added.*)

Finally, Paragraph 6 states that "[t]his agreement does not address any business improvement districts except the DCBID adopted by ordinance of the City Council on June 19, 2012." (II AA at 227.)

IV. STANDARD OF REVIEW

A trial court's interpretation of a written instrument is subject to de novo review. (*Parsons v. Bristol Dev. Co.*, 62 Cal.2d 861, 865-866 (1965).)

V. THE TRIAL COURT'S RULING MUST BE UPHELD

The Superior Court applied a common sense reading of the terms of the Settlement Agreement as a whole, and correctly found that the Settlement Agreement unambiguously applied only to the 2013 DCBID and that the City has no further

obligations under the Agreement once the 2013 DCBID expires by its terms.

The parties appear to agree on the principles used to interpret contracts such as the Settlement Agreement. As stated in *Bay Cities Paving & Grading v. Lawyers' Mutual Ins. Co.*, 5 Cal. 4th 854, 867 (Cal. 1993):

> Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. (Civ. Code, § 1636.) Such intent is to be inferred, if possible, solely from the written provisions of the contract. (Id., § 1639.) The 'clear and explicit' meaning of these provisions, interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage' (id., § 1644) controls judicial interpretation. (Id., § 1638.)" (*AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807, 821-822 [274 Cal. Rptr. 820, 799 P.2d 1253]; *Reserve*

Insurance Co. v. Pisciotta (1982), 30 Cal.3d 800, 807 [180 Cal. Rptr. 628, 640 P.2d 764].) This reliance on common understanding of language is bedrock.

Equally important are the requirements of reasonableness and context.

Moreover, "[t]he purpose of a writing must be ascertained solely from a common-sense meaning of it as a whole with a view to effectuate the mutual intention of the parties." (*Broome v. Broome*, 104 Cal.App.2d 148, 158. (Cal.App. 1951).) "No term of a contract is either uncertain or ambiguous if its meaning can be ascertained by fair inference from other terms thereof." (*Burr v. Western States Life Ins. Co.*, 211 Cal. 568, 576 (Cal. 1931).) Finally, "when interpreting a contract, we strive to interpret the parties' agreement to give effect to all of a contract's terms, and to avoid interpretations that render any portion superfluous, void or inexplicable. An interpretation rendering contract language nugatory or inoperative is disfavored." (*Brandwein v. Butler*, 218 Cal. App. 4th 1485, 1508 (2013).)

The Superior Court properly applied these principles. A common sense reading of the Settlement Agreement as a whole clearly limits it to the lifetime of 2013 DCBID. Appellants argue that the vast majority of the Agreement is meaningless and instead rely on a partial quote of one term, Paragraph 5. No reasonable person would read the Agreement as do Appellants. The Court's ruling should be upheld.

A. THE SETTLEMENT AGREEMENT CLEARLY AND UNAMBIGUOULSY APPLIES ONLY TO THE LIFE OF THE 2013 DCBID.

Read in context, and applying all of its terms, the Settlement Agreement unambiguously applies only to the 2013 DCBID.

Paragraph 6 explicitly states: "This Agreement does not address any business improvement districts except the DCBID adopted by ordinance of the City Council on June 19, 2012." (I AA at 227.) Only the 2013 DCBID was adopted by ordinance on June 19, 2012. The 2018 DCBID was adopted by ordinance later,

on June 7, 2017. (II AA at 652-655.) The 2018 DCBID is not "the DCBID adopted by ordinance of the City Council on June 19, 2012." Therefore, the Agreement cannot provide any relief to Appellants for the 2018 DCBID. Accordingly, the Court found that the City had no obligations under the Agreement with respect to the 2018 DCBID. (IV AA at 677, *quoting* the Settlement Agreement.)

Paragraph 6 should fully resolve this matter. Regardless of whether the 2018 DCBID is a "renewal" of, a "continuation" of, or entirely unrelated to, the 2013 DCBID, the 2018 DCBID was not "adopted by ordinance of the City Council on June 19, 2012." The Agreement provides no relief with respect to the 2018 DCBID.

Should a reader not be convinced by Paragraph 6, the other Paragraphs make it abundantly clear that it applies only to during the lifetime of the 2013 DCBID. Paragraph 4 states that the parties are settling "their claims against each other arising out of and as described in the Litigation." (II AA at 227.)

Paragraph 2 describes that litigation as addressing "the formation of the DCBID, adopted by ordinance of the City Council on June 19, 2012." (*Id.*) Thus, when the parties "resolve the matters raised and described in the Litigation" the parties are resolving **only** issues relating to the 2013 DCBID.

Likewise, Paragraph 5 itself limits the City's obligations to "the DCBID, as described in the Petition." (II AA at 227.) The Petition refers **only** to the 2013 DCBID. (I AA at 1-187.). Paragraph 5 further provides that the "the City will remit to Plaintiffs an amount sufficient to satisfy the amounts paid by Plaintiffs to the DCBID as part of **assessments set forth in the Engineer's Report and the Management Plan."** (II AA at 227.) The "Engineer's Report" and "the Management Plan" are "attached to the Petition for peremptory writ of Mandate ('Petition') on which this matter is based." (Paragraph 2, II AA at 227.) The Engineer's Report and Management Plan attached to the Petition refer **only** to the 2013 DCBID (I AA at 21-168.)

That language would be completely superfluous unless it was intended to limit the City's obligations to the 2013 DCBID, and so must be interpreted to so limit the Agreement.

(*Brandwein, supra,* 218 Cal. App. 4th at 1508.) Every BID is required to have a Management Plan and an Engineer's Report. (*See* California Constitution, Article XIIID, §4(b); Streets and Highways Code § 36622.) Thus, if the language refers merely to "any" such documents, the language would be superfluous. All BIDs must have an Engineer's Report and a Management Plan, and so the reference to those documents would mean only any BID. The Agreement would read the same with or without it. Therefore, Paragraph 5, must also be read to explicitly limit the Agreement to the 2013 DCBID.

Despite all of these clear limitations in the Agreement, Appellants argue that only Paragraph 5 is "in dispute," and only address a small part of Paragraph 5. This flawed premise leads Appellants to misread the Agreement.

1. In Context, Paragraph 5 Means Nothing Like What Appellants Believe.

Read in context, Paragraph 5 is entirely clear. The Settlement Agreement applies only to the 2013 DCBID, as it is the only DCBID adopted by ordinance of City Council on June 19, 2012. Paragraph 5, however, provides that if for some reason the 2013 DCBID changes its formulation, the City would have no obligation to satisfy any further assessments. (I AA at 227.) If the City altered the 2013 DCBID to change the assessment methodology, the City would no longer be bound by the Settlement Agreement. (*Id.*) Indeed, "current formulation" does not have any substantive meaning unless it refers to the 2013 DCBID and changes to that BID. Each BID by definition has a different formulation to all other BIDs.

Thus, far from extending the Settlement Agreement indefinitely as urged by Appellants, Paragraph 5 only provided a means to end the Settlement Agreement before the 2013 DCBID expired. Paragraph 6 clearly limits the Agreement to the lifetime

of the 2013 DCBID and the other Paragraphs emphasize this limitation. The Agreement's own language shows that the intent of Paragraph 5 was to allow the City to fix any perceived issues with the 2013 DCBID and then be free of its obligations under the Settlement Agreement.

To avoid this straightforward reading of the Agreement Appellants provide an odd take on what it means to read a document "as a whole." (Opening Brief at 41-43.) Appellants argue essentially that the Agreement must be "read as a whole" by ignoring everything except Paragraph 5. Per Appellants, when Paragraph 2 states that the "the operation of the DCBID and the assessments to be made to support the operation of the DCBID are set forth in [the 2012 Engineers Report and the 2012 District Management Plan]," we should ignore it because Paragraph 5 "lacks" such references. (Opening Brief at 43.) Although the same defined term (the DCBID) is used in each Paragraph, argue Appellants, we must instead infer that "the DCBID" in Paragraph 5 has nothing to do with "the DCBID" in

Paragraph 2. Moreover, Appellants argue that because the parties did not include the "exact" end date of the 2013 DCBID, they intended the Agreement to last indefinitely. [1] (Opening Brief at 45.) Paragraph 6 is largely ignored.

This is an odd method of interpreting documents. It allows one to interpret a document however one wishes. Following Appellants' logic, the City would argue that when Paragraph 5 refers to "the City" it refers to Long Beach, since Paragraph 5 does not specifically define "the City" as the "City of Los Angeles."

Whatever Appellants are doing here, they are not viewing the Agreement as a whole. Not only are the other Paragraphs completely superfluous under this reading, but the Paragraphs all now contradict each other. The Agreement explicitly applies

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[1] The City is puzzled by this argument, as the Agreement does contain an "exact" end date. The Agreement applies only to the 2013 DCBID, and so lasts only so long as the 2013 DCBID. As noted by Appellants, the parties knew the 2013 DCBID would end on December 31, 2017, and so the Agreement as written ended on that date. An Agreement that, by its terms, would end on December 31, 2017, seems to have an "exact" (albeit inexplicit) end date.

only to the 2013 DCBID in some Paragraphs, but applies to any DCBID in other Paragraphs. This is a completely irrational reading of the Agreement.

2. "Circumstances" Show No Contrary Intent.

Appellants argue to no avail that "circumstances" support their interpretation of the Agreement. As an initial matter, Appellants direct the Court almost entirely to "circumstances" that arose **after** the parts disputed terms of the Contract. Although Appellant cited to *Barham v. Barham*, 33 Cal. 2d 416, (1949), for the proposition that extrinsic evidence can be reviewed, Appellants failed to provide an important caveat, "that 'a construction given the contract by the acts and conduct of the parties with knowledge of its terms, **before any controversy has arisen as to its meaning,** is entitled to great weight and will, when reasonable, be adopted and enforced by the court.'" (*Id.* at 423, *emphasis added, internal citations omitted.*)

Moreover, Appellants failed to provide another important caveat, that extrinsic evidence is used only when a contract "is

fairly susceptible to one of two constructions." (*Id.* at 423.) The Agreement appears unambiguous and whatever ambiguity Appellants try to raise can be quickly resolved solely by reviewing the Agreement itself. Appellants' arguments here are irrelevant and "circumstances" should not affect the Agreement's meaning.

In any event Appellants point to "circumstances" that shed no light on the interpretation of the Agreement. Appellants argue that "communications" show the Agreement was intended to be "simple," but that provides no guidance whatsoever. (*See* Opening Brief at 44). A "simple' Agreement easily could have been intended to apply only to the 2013 DCBID. If anything, a "simple" agreement would more likely be intended to apply only to the 2013 DCBID, as that is the "simplest" way to apply the Agreement.

Moreover, Appellants wrongly believe these communications show that the 2018 DCBID's formulation is "the issue" that determines whether the Agreement applies to the

2018 DCBID. (Opening Brief at 28.) But the communications show nothing of the sort. The Agreement provides two separate bases that relieve the City of any obligations: (1) the end of the 2013 DCBID, or (2) a different formulation of the 2013 DCBID. (II AA at 227.) The 2018 DCBID clearly uses a different formulation from the 2013 DCBID (as explained below). The City believed this alone provided ample justification for Appellants to cease their efforts to seek future payments under the Agreement, and so the City provided that justification to Appellants. The City had no obligation or desire to explain all of its reasoning. Neither did Appellants, who similarly never explained their reasoning or their position.

Furthermore, the language in the Agreement limiting it to the 2013 DCBID was clear and Appellants had already ignored it. The City believed it pointless to raise Paragraph 6 when Appellants had already disregarded it altogether. These communications were not court filings where the City waived any argument not made (fortunately for Appellants, who raised no

arguments whatsoever during these discussions). The City could have said nothing at all. Instead, the City provided one reason why the Agreement no longer applied, ample justification for its actions, and left it at that.

Thus, these communications do not show that the "formulation" of the 2018 DCBID was the only issue. Instead, the communications show that the "formulation" of the 2018 DCBID was the only issue **the City wished to discuss.**

Likewise, Appellants are simply wrong that any inferences should be drawn against the City as the drafter of the Agreement. The Agreement was jointly drafted by both parties. (*See* II AA 250.) If there is any ambiguity, it is just as much the fault of Appellants as the City. Appellants when providing their draft Agreement did not include any language addressing their current concerns, and so are not entitled to have ambiguous language interpreted in their favor.

The Court did not err. These "circumstances" are irrelevant because they do not clarify any ambiguities.

Appellants also draw unfounded inferences from these communications and so misread them. Therefore, these arguments provide no basis to overrule the Court.

B. THE 2018 DCBID WAS NOT ADOPTED BY ORDINANCE OF CITY COUNCIL ON JUNE 19, 2012.

Much of the Opening Brief argues that the Agreement applies to the 2018 DCBID because it applies to "renewals" and "continuations" of the 2013 DCBID. (Opening Brief at 32-43.) These arguments are hard to parse and are in the end irrelevant. The Agreement applies only to "the DCBID adopted by ordinance of the City Council on June 19, 2012." (IV AA at 227, Paragraph 6.) The 2018 DCBID was adopted by ordinance of the City Council on June 7, 2017. Whether a renewed BID, a continued BID, or an entirely new BID, the 2018 DCBID was not adopted by ordinance of the City Council on June 19, 2012.

Therefore, the Agreement does not address the 2018 DCBID regardless of whether it "renewed" the 2013 DCBID, did not "reformulate" the 2013 DCBID, or however else Appellants

wish to characterize the 2018 DCBID. The rest of the Paragraphs further emphasize in a number of ways that the "DCBID" addressed by the Agreement is only the 2013 DCBID. The City has no obligations to Appellants regarding the 2018 DCBID and the Court's ruling should be upheld.

Moreover, Appellants arguments are also wrong as set forth below.

1. The 2018 DCBID Is A Different Entity Than the 2013 DCBID.

Appellants argue that both under a common layperson's understanding of the "DCBID" and the technical meaning of the "DCBID," the 2013 DCBID is the same as the 2018 DCBID. Both arguments ignore the language in the Agreement showing what the "DCBID" means.

Thus, Appellants incorrectly describe how a reasonable layperson would read the Agreement. Regardless of what the "DCBID" may mean generally, the Agreement limits the "DCBID" to the 2013 DCBID. Therefore, a reasonable layperson

must also so limit the "DCBID" when interpreting the Agreement. Moreover, a reasonable layperson would consider that a DCBID was first formed more than 20 years ago, but the Agreement clearly does not apply to those DCBIDs. This would lead a reasonable layperson to think that "DCBID" does not refer simply to anything called the DCBID, and must mean something else. Fortunately, this reasonable person would have ample language in the Agreement itself showing it means the DCBID adopted by ordinance on June 19, 2012.

Appellants' technical arguments are even weaker. Appellants argue first that a "renewed" BID continues the expiring BID. But a renewed BID is a new BID, established anew under the normal BID formation rules. Under Streets and Highways Code § 36630 (entitled "Expiration of district; Creation of a new district"), an expiring district "may be renewed pursuant to this part," i.e., Part 7, which requires the "establishment," i.e., the creation, of a business improvement district. (Streets and Highways Code § 36620.) Thus, the expiring BID literally ends,

and the renewed BID is literally a new, different BID. Renewed BIDs have special laws to recognize that the expiring BID and the new BID may have overlapping obligations, but otherwise are completely separate entities. (*See* Streets and Highways Code § 36600.)

Nor is a renewed BID a "reformulation" of the expiring BID under Section 36660, as argue Appellants.[2] A BID is "reformulated" via modification pursuant to Section 36635, which allows changes to services, boundaries and so on as discussed by Appellants. A "renewal" under Section 36660 is not a reformulation of a BID, but the "establishment (i.e., the creation) of an entirely new BID to replace one that ceased to exist.

The Agreement reflects these technical principles. It applies to the DCBID "adopted by ordinance on June 19, 2012,"

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[2] Oddly, Appellants argue that the City "could have reformulated" the 2018 DCBID to be similar to other assessment districts that were found unconstitutional. (Opening Brief at 40-41.) While true, the City decided against adding to any legal issues in the 2013 DCBID and instead established a 2018 DCBID that only assessed properties for special benefits, and did not assess for the general benefits provided by the 2018 DCBID.

i.e., the 2013 DCBID, and no others. The City could have modified the 2013 DCBID via Section 36635, which would have prematurely ended the City's obligations by "reformulating" the 2013 DCBID, but did not. The 2018 DCBID is an entirely different entity, adopted by ordinance on June 7, 2017.

Indeed, if Petitioners were correct, and a "renewed" BID simply continued the expiring BID, no one could ever challenge the "renewed" BID. Under Streets and Highways Code § 36633, the validity of a BID's assessments must be challenged within 30 days of the creation of the BID. (*See The Inland Oversight Committee v. City of Ontario*, 240 Cal. App. 4th 1140 (2015).) If "renewed" BIDs simply continued the expiring BID, the time to challenge such assessments would have long since expired when the initial BID was established. Fortunately, "renewed" BIDs are new entities, established anew by ordinances adopted by local agencies, and so remain subject to challenge.

C. THE SUPERIOR COURT DID NOT ERR.

Appellants argue that the Court made several analytical errors in its ruling. Most centrally Appellants argue that the Court erred by finding it unreasonable to apply the Agreement to anything but "pending claims."

Regardless of whether the Court erred in its ruling, the City has shown that the result is correct and should be affirmed. The Agreement applies only to the 2013 DCBID, the 2013 DCBID has expired by its terms, and the City has no obligations under the Agreement regarding the 2018 DCBID. Thus, whether the Court erred by finding it unreasonable to apply the Agreement beyond "pending claims" is irrelevant, as the Agreement clearly applies only to the 2013 DCBID by its terms.

Because this and Appellants' other purported errors intersect with the substance of the case, however, the City addresses them here.

1. The Court Properly Used Common Sense To Interpret the Agreement's Terms.

The Superior Court applied common sense and found it unreasonable to interpret the Settlement Agreement to go beyond the scope of the matters in litigation. The Court did not find (as Appellants argue) that settlements are "necessarily" limited to pending claims, nor did the Court "presume" that settlements are so limited. (*See* Appellant's Opening Brief at 22.) To the contrary, the Court held that "it is not reasonable to interpret the Agreement as an agreement to settle anything other than pending claims." (IV AA at 677.) The Court was thus only applying common sense to reach the result of any reasonable person: this settlement agreements was intended to resolve pending disputes.

If the parties consent to a settlement agreement addressing other matters, then of course an agreement can do so. The Superior Court did not hold otherwise. But absent some language to that effect, common sense would limit the agreement

to the pending litigation. In litigation over ownership of a parcel of undeveloped land, for instance, if an agreement said that "the property" would be transferred to the Plaintiff, a reasonable person would believe that "the property" referred to the subject of the litigation, not something else. The cases cited by Appellants say nothing contrary. Thus, the Court did not err by finding it unreasonable to interpret the Agreement to apply beyond the pending claims.

Nor is there any doubt regarding what the pending claims were. The Petition, the ordinance of adoption, the 2012 Engineer's Report, and the 2012 Management District Plan all were referred to in the Agreement and are described precisely in the Paragraphs. These documents refer only to the 2013 DCBID. The Petition literally was drafted by Appellants and filed with the Court, and the other documents were attached to it. If Appellants did not knowingly and willingly consent to the references to those documents, no party ever could.

2. The "Non-Profit" Claim Is Irrelevant.

Appellants argue because they claimed to be "a non-profit provider of residential housing, [. . .] exempt from assessments **generally**," the Court was required to interpret the Settlement Agreement to extend beyond the life of the 2013 DCBID. (Appellant's Opening Brief at p. 25.)[3]

This argument does not address the Court's actual reasoning. The Court reasoned that the lawsuit addressed one BID, the 2013 DCBID. That BID depends upon its specific founding documents (i.e., its adopting ordinance, its Engineers Report, and its Management District Plan.) Any other BID would have different founding documents and raise different issues. Such a BID may or may not impose assessments on non-profits, just as such a BID may or may not assess properties for general benefits, may or may not separate general from special

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[3] The City points out that non-profits are not "exempt from assessments generally," and has no idea why Appellants believe that non-profits are "exempt from assessments generally." (*See, e.g.*, California Constitution Article XIIID, §§ 2 and 4.) The substance of Appellants' claims are not relevant, however, and so the City does not address that further.

benefits, or otherwise may or may not pass muster under Article XIIID.

Thus, the Court's reasoning applies to the "non-profit" claim just as forcibly as to Appellants' other claims. That was at issue for the 2013 DCBID, and resolved by the Agreement for the 2013 DCBID, just like all other issues raised through the litigation. Other BIDs, including other DCBIDs, may or may not raise such issues. As the Court noted, no one could know if other BIDs did so until they were created, and it would not be reasonable to proactively settle disputes before those other BIDs before anyone even know if such a dispute existed. Thus, it would be unreasonable to think that the City was agreeing to pay Appellants' assessments regardless of how other BIDs addressed these issues, including the "non-profit" issue.

3. The Court Did Not "Change the Language" of the Settlement Agreement.

Appellants argue that the Court erred when it "changed the language" of the Agreement. The Court did no such thing. The

Court simply read the agreement in a common sense manner. Because Appellants fail to apply simple, common-sense analysis, they see error where none exists.

Appellants argue that the Court erred in finding that in Paragraph 1 "'DCBID' is a defined term that references back to the 2012 ordinance 'as set forth in . . . the Litigation." But Paragraph 1 appears to say exactly what the Court finds. Paragraph 1 states that a dispute arose "regarding the Downtown Center Business Improvement District ("DCBID") located in the City of Los Angeles **as set forth in an action entitled Hill RHF Housing [. . .] (the 'Litigation').**" (II AA at 227.) This seems to clearly define the "DCBID" as "that DCBID referred to in the Litigation." "The Litigation" addresses only the DCBID adopted by ordinance on June 19, 2012. (I AA at 5-7.) The June 19 Ordinance is specifically referred to in the Petition, and the adopting Motion is attached to the Petition as Exhibit G. (I AA at 7, 183.) Thus, the Court seems-well justified in finding that the DCBID addressed by the Settlement was the DCBID

adopted by ordinance in 2012, i.e., the 2013 DCBID. And the later Paragraphs emphasize the Court's correctness.

Again, Appellants only can argue for ambiguity, let alone error, by ignoring almost the entire Agreement to focus on one out-of-context clause. Even then, again Petitioners show not error, but their own failure to carefully read the Agreement and the Court's Ruling.

4. The Non-Contemporaneous Statements Are Completely Irrelevant.

Appellants argue that emails exchanged in 2017, years after the drafting of the Agreement, somehow show error by the Court. (Opening Brief at 27-28.) Appellants contend that the Court committed reversible error by failing to "even consider" these emails. (*Id.*) But these emails were in the Record before the Court and were not objected to or excluded from evidence. (II AA 259-263.) That is all the law requires. (*See Morey v. Vannucci*, 64 Cal. App. 4th 904, 912 (1994) ("Where the meaning of the words used in a contract is disputed, the trial court must

provisionally receive any proffered extrinsic evidence which is relevant to show whether the contract is reasonably susceptible of a particular meaning." (*Emphasis added.*))) Thus, the Court did all that was required even under Appellants' theory.

In any event these communications are completely irrelevant. This is addressed above in Part A.2, *supra*, and the City does not repeat those arguments here.

D. THE COURT PROPERLY IMPUTED A FIVE-YEAR LENGTH TO THE AGREEMENT.

Assuming the Agreement has an ambiguous or indefinite length as argued by Appellants, the Court properly read into the Agreement an implied term that the Agreement would end with the 2013 DCBID. (*See* IV AA at 679). "California courts have not hesitated to imply a term of duration when the nature of the contract and surrounding circumstances afford a reasonable ground for such implication." (*Consolidated Theatres, Inc. v. Theatrical Stage Employees Union*, 69 Cal. 2d 713, 728 (1968).

Here, the Agreement appears to explicitly end with the 2013 DCBID; however, if the Agreement lasts indefinitely as Appellants argue, the nature of the contract and surrounding circumstances show that the Agreement should implicitly end with the 2013 DCBID.

Appellants do not argue that the Court erred in this finding and so do not argue that the Court erred in ruling against them on this basis. Therefore, Appellants have waived that argument on appeal. Both on that basis, and because the Court was correct, the Court's ruling should be affirmed.

E. THE 2018 DCBID DOES NOT CONTINUE THE FORMULATION OF THE 2013 DCBID.

The Settlement Agreement limits the City's obligations in two ways. First, it only requires the City to satisfy assessments relating to the 2013 DCBID. But even then, the 2013 DCBID must continue in its "current formulation," i.e., as described in the Engineer's Report and the Management District Plan that supported the creation of the 2013 DCBID.

The 2018 DCBID does not continue the formulation of the 2013 DCBID. The 2013 DCBID assessed properties for 100% of the costs of its services. (I AA at 21-168.) The 2013 DCBID did not compute any general benefit from its services. (*Id.*)

The 2018 DCBID, on the other hand, found that some general benefits were provided by its services. (II AA at 336-396.) The costs of those general benefits were not borne by property owners. (II AA at 357-360.) Property owners were assessed the cost of the special benefits provided, which were less than the cost of the total services provided by the 2018 DCBID. (*Id.*)

Thus, whatever their similarities the 2018 DCBID was fundamentally different from the 2013 DCBID. The 2013 DCBID assessed properties owners for 100% of the cost of its services; the 2018 DCBID did not. The two BIDS have a different (if similar) formulation.

Appellants point to a number of similarities (the geographic boundaries, how the cost of special benefits were apportioned to various properties, and so on), but no number of similarities can

meet Appellants' burden here. Appellants must show that the 2018 DCBID continues the formulation of the 2013 DCBID, and they cannot. Assessing properties for 100% of the cost of services is fundamentally different than assessing properties for less than 100% of the cost of services.

The Court below did not reach this issue, finding that the Settlement Agreement was limited to the 2013 DCBID. The City argued this below, however, and it presents an independent basis to uphold the Court's ruling that the City has no further obligations under the Settlement Agreement. Even should the 2013 DCBID "continue" via the 2018 DCBID, it does not continue in its "current formulation." It no longer assesses properties for 100% of the cost of its services.

VI. CONCLUSION

For the forgoing reasons the Court's ruling below should be affirmed.

Dated: July 18 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to California Rules of Court, Rule 8.204 (c) Counsel for Respondent certify that this brief is produced using Century Schoolbook font, 13 point type size, and contains 7,251 words as counted by the word processing program.

Dated: July 18 2018

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PROOF OF SERVICE

I, Cynthia Marchena, declare as follows: I am employed in the County of Los Angeles, California. I am over the age of 18 and not a party to the within action. My business address is 200 N. Main St., Rm. 920 C.H.E., and Los Angeles, California 90012.

On July 18, 2018, I served the foregoing document described as **APPELLEE'S BRIEF ON APPEAL,** on the interested parties in this action by placing a **[X]** true copy [ ] original copy thereof enclosed in a sealed envelope addressed as follows:

Stephen L. Raucher, Esq.
REUBEN RAUCHER & BLUM
12400 Wilshire Blvd., Ste. 800
Los Angeles, CA 90025

[X] **MAIL** - I caused such envelope to be deposited in the United States mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I caused such envelope to be deposited in the mail at Los Angeles, California, with first class postage thereon fully prepaid.

[ ] **BY PERSONAL SERVICE** - ( ) I delivered by hand, or ( ) I caused to be delivered via messenger service, such envelope to the offices of the addressee with delivery time prior to 5:00 p.m. on the date specified above.

[ ] **BY FACSIMILE** - I caused the above-referenced document(s) to be transmitted to the above-named person(s).

[ ] **Federal** - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

[x] **State** - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 18, 2018, at Los Angeles, California.

Cynthia Marchena